UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**Cause No. 4:16CR00162 JAR/SPM**
v.	)	
	)	
JOSEPH MASTERS,	)	
	)	
Defendant.	)	

MOTION TO SUPPRESS STATEMENTS AND MEMORANDUM OF LAW IN SUPPORT

Comes now, Joseph Masters, by counsel, and moves this Court to enter an order suppressing all testimony and other evidence relating to or leading from any alleged written, oral, or recorded statement obtained from Masters, whether incriminating or exculpatory, that the government intends to use against him at trial. In support of this motion, Masters submits the following:

Factual Background

1. On March 18, 2016, Joseph Masters went to the residence of Robert Waller to visit with his neighbors located at 9992 Fox Hall Ct., St. Ann, Missouri 63074. Robert Waller, Jamie Fitzgerald, Waller's step-daughter[1], Melissa Wagner, M.M., M.W., T.D., and M.D. were present at the residence. Waller, Fitzgerald, and Wagner were all drinking alcohol. While at the residence, Jamie Fitzgerald, who was intoxicated, confronted Masters and accused him of inappropriately touching her daughter M.M. She got in his face and yelled at him. Waller's step-daughter called 911 and law enforcement responded to the residence. During the 911 call, she stated that Fitzgerald

[1] The 911 caller identified herself as Waller's step-daughter.

was "now trying to attack Joe," and one can inaudibly hear a woman yelling in the background. Upon arrival, Officer Cafer was met by Fitzgerald. After speaking with her, Officer Cafer had Masters step outside of the residence where he placed Masters under arrest for peace disturbance. Officer Cafer placed Masters in the rear of Officer Wilson's police vehicle, and Officer Wilson transported Masters to the St. Ann Police Department.

2. Masters did not sign a waiver of his *Miranda* rights until approximately 1:03 a.m. on March 19, 2016. Between his arrest and signing of the *Miranda* rights form, Masters was questioned by law enforcement and made statements. Prior to obtaining these statements, the officers failed to properly advise Masters of his constitutional rights as set forth in *Miranda v. Arizona*, including a warning that he had the right to remain silent, that anything he said could and would be used against him in a trial, that he had a right to an attorney being present during the questioning, that an attorney would be appointed for him if he could not afford one, and that he had a right to stop the interrogation at any time he requested. 384 U.S. 436 (1966). These statements are also the product of an illegal, unconstitutional, and unreasonable detention of Masters.

3. After signing the form, Masters asked Detective Schmidt what charges he was being interviewed about. When Detective Schmidt informed Masters of the allegation that he inappropriately touched a female, Masters invoked his right to counsel. If police first interrogate a defendant without *Miranda* warnings, then issue *Miranda* warnings and interrogate the defendant a second time, the second statement may also be excluded. See e.g., *United States v. Barnes*, 713 F.3d 1200, 1205-06 (9th Cir. 2013) (exclusion of defendant's statements proper when FBI agent deliberately delayed giving *Miranda* warnings until after agent confronted defendant with

incriminating evidence).

4. After invoking his right to counsel, Detective Schmidt told him that his attorney would tell him not to talk. In response to this, Masters made additional statements until the interview was concluded. These statements violated *Miranda* and were not voluntary and are the result of mental coercion and duress. Masters did not have an attorney present and he did not voluntarily and knowingly waive his right to counsel. Pursuant to *Miranda* "once a suspect asserts the right [not to speak without an attorney], not only must current interrogation cease, but he may not be approached for further interrogation 'until counsel has been made available to him'". *McNeil v. Wisconsin*, 501 U.S. 171, 176-177, 111 S.Ct. 2204, 115 L.Ed. 2d 158 (1991) (quoting *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 68 L.Ed. 2d 378 (1981)). It is well-settled that if a suspect requests counsel he cannot be approached for further interrogation unless the suspect themselves reinitiates conversation. *Davis v. United States*, 512 U.S. 452, 458, 114 S.Ct. 2350, 129 L.3d 2d 362 (1994).

4. The government bears the burden of proving by a preponderance of the evidence that the Defendant waived his rights under *Miranda* and that the waiver was voluntary. *Colorado v. Connelly*, 479 U.S. 157, 168, 107 S.Ct. 515, 92 L.Ed.2d 473 (1986).

5. Counsel has reviewed the discovery that has been provided to Defendant and has discussed this case with the Assistant United States Attorney. Counsel has a good faith belief the Government will seek to introduce the above referenced evidence.

WHEREFORE, as the alleged statements of Masters were taken in violation of the Fourth, Fifth and Sixth Amendments of the United States Constitution, Masters moves this Court to enter an order suppressing any and all statements obtained from Masters – whether written, oral, or recorded, signed or unsigned, and whether exculpatory or incriminating – and the fruits thereof, including, but not limited to, all evidence obtained as a result of and leading from these statements.

Respectfully submitted,

FRANK, JUENGEL & RADEFELD,
ATTORNEYS AT LAW, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2016, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following.

Ms. Colleen Lang
United States Attorney
111 South Tenth Street
St. Louis, Missouri, 63102.

/s/ Daniel A. Juengel
DANIEL A. JUENGEL